

## Existing HUD Zika Abatement Resources

**DISCLAIMER:** The potential uses of HUD assistance for Zika vector abatement as described below do not represent definitive determinations that funding for these activities will be permitted through the identified programs. Any proposed use of funds will need to satisfy all applicable requirements, statutory, regulatory, or otherwise, and the permissible use of funds will depend on the specific facts presented by specific scenarios. Additionally, the described potential uses of HUD assistance may be subject to qualification, which may or may not be identified or described in the brief summaries below.

### **CDBG Entitlement/State Program**

Under the CDBG Entitlement Program, spraying for the abatement of mosquitos that spread Zika in a Zika transmission area could fit under the public services eligible activity, 24 CFR 570.201(a), and comply with either the low and moderate income (LMI) area benefit national objective, 24 CFR 570.208(a)(1), or the urgent need national objective, 24 CFR 570.208(c). Additionally, the installation or replacement of screens could fit under the housing rehabilitation eligible activity, 24 CFR 570.202, and comply with either the low and moderate income (LMI) housing activities national objective, 24 CFR 570.208(a)(3), or the urgent need national objective, 24 CFR 570.208(c). There are however, certain limitations and things a recipient would need to demonstrate for these types of activities to fit within the CDBG Entitlement Program, some of which are briefly mentioned below.

Although the information below is specific to the CDBG Entitlement Program, a similar analysis applies with regard to the availability of and limitations associated with the distribution of State CDBG Program funds to units of general local government in the state's non-entitlement areas. The eligibility of and limitations associated with public service activities under the State CDBG Program are reflected in 42 USC 5305(a)(8). Eligibility of and limitations associated with housing rehabilitation activities under the State CDBG Program are reflected in 42 USC 5305(a)(4). Requirements associated with compliance with the low and moderate income (LMI) area benefits national objective, the LMI housing activities national objective, and the urgent need national objective under the State CDBG Program are reflected in 24 CFR 570.483(b)(1), 24 CFR 570.483(b)(3), and 24 CFR 570.483(d), respectively. It is important to note that State CDBG Program funds put toward activities using the urgent need objective are subject to a de facto cap of 30% of the aggregate grant amount, because by statute, at least 70% of all Federal financial assistance provided to States through the State CDBG Program, and if applicable, guarantees and grants provided through 42 USC 5308, must support activities meeting national objectives that benefit low and moderate income persons.

Spraying for the abatement of mosquitos that spread Zika may satisfy eligibility as a public service activity that is concerned with health and welfare under the CDBG Entitlement Program if mosquito abatement is a new service or a quantifiable increase in the level of existing service provided over the prior 12 months. It's important to note however, that there is a 15% statutory cap on the amount of CDBG funds that a recipient can use for public services (for State CDBG grants this 15% statutory cap applies to the State's grant as a whole, not each individual non-

entitlement grantee), so notwithstanding potential eligibility, a recipient that has run up against the cap cannot fund this type of activity without reducing funding for some other existing activity.

Installation or replacement of screens in privately owned residential properties and low-income public housing to abate the spread of Zika may also satisfy eligibility as a housing rehabilitation activity under 24 CFR 570.202.

If spraying activities are carried out in an area that is primarily residential, where at least 51% of the residents are low- and moderate-income persons, and provides benefits to all the residents in the area, the activity could comply with the LMI national objective for area benefit activities, 24 CFR 570.208(a)(1).

Screen installation and replacement activities could comply with the LMI national objective for housing activities under 24 CFR 570.208(a)(3) if the screen installation or replacement activities are carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by low and moderate income households.

The urgent need national objective is a potential alternative national objective that spraying or screening might satisfy, but a CDBG recipient would need to certify that it is unable to finance the abatement on its own, and that other sources of funding aren't available, both of which a recipient may not be able to demonstrate when other federal agencies have other sources of funding they can make available. To satisfy this national objective, a recipient would also need to certify that the activity "is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of a community which are of recent origin or which recently became urgent" (meaning within the last 18 months). 24 CFR 570.208(c). It is important to note that like the State CDBG Program, funds put toward activities using the urgent need national objective under the CDBG Entitlement Program are subject to a de facto cap of 30% of the aggregate grant amount, because by statute, at least 70% of all Federal financial assistance provided to local governments through the CDBG Entitlement Program, and if applicable, guarantees and grants provided through 42 USC 5308, must support activities meeting national objectives that benefit low and moderate income persons.

### **Emergency Solutions Grants Program**

ESG funds can be used to install air conditioners and screens in homeless shelters, to improve site drainage to remove standing water, and to spray around homeless shelters to make the shelter occupants safe. ESG funds can be used to educate individuals and families experiencing unsheltered homelessness or residing in emergency shelters on how to protect themselves against the spread of Zika. ESG funds can be used to provide protective clothing, insect repellent, and condoms to unsheltered homeless people. ESG funds can be used to provide condoms to shelter occupants, if the condoms are provided by licensed medical professionals as preventive medical care and this service is otherwise unavailable within the community. ESG funds can be used to transport individuals and families in unsheltered locations or residing in emergency shelters to medical appointments.

Because mosquitoes that spread Zika virus bite mostly during the daytime, it's also worth noting that operating costs of day-shelters are eligible costs under ESG, as are the costs of transporting unsheltered homeless people to emergency shelters (including day-shelters).

### **Continuum of Care (CoC) Program**

CoC recipients that received funding for operating costs, which is defined to include maintenance of the buildings or units, may use those funds to install or replace screens; to repair air conditioning; and to spray the project site with insect repellent. They could also use the funds to improve site drainage to remove standing water.

CoC recipients that received funding for supportive services may use funds in several different ways to address Zika. Outreach services include providing clothes and toiletries to homeless persons. Therefore, using grant funds to provide insect repellent, condoms and clothing embedded with insect repellent to unsheltered homeless people is permissible. Education services are also eligible, so education about Zika would be eligible for both the sheltered and unsheltered homeless population under "health education." Additionally, the costs of transporting homeless persons to and from medical care is an eligible supportive service.

Preventive medical care is eligible as a supportive service under the category of outpatient health services. It must be provided by licensed medical professionals, but it includes:

- (i) Providing an analysis or assessment of an individual's health problems and the development of a treatment plan;
- (ii) Assisting individuals to understand their health needs;
- (iii) Providing directly or assisting individuals to obtain and utilize appropriate medical treatment;
- (iv) Preventive medical care and health maintenance services, including in-home health services and emergency medical services;

Consequently, the cost of providing condoms to program participants in housing would be eligible as preventative medical care and grant funds could be used to both educate program participants about Zika and to treat Zika among homeless persons.

### **Housing Opportunities for Persons with AIDS (HOPWA) Program**

HOPWA funds may potentially be used in several ways to address the Zika virus, including the eligible uses described below:

- (1) Operating costs for housing [24 CFR 574.300(b)(8)]
  - a. Operating costs include maintenance for housing, which could include installation or replacement of window screens.
- (2) Supportive services [24 CFR 574.300(b)(7)]
  - a. Supportive services are defined open-endedly and include health, assessment, and intensive care, among others, which may be relevant. Supportive services could potentially include condoms and insect repellent to prevent infection or spreading of the Zika virus.
  - b. We caution, however, that with respect to uses categorized as health services, health services are restricted to eligible persons with HIV/AIDS and the use of

HOPWA funds is not permitted for health services payments that have been made or can reasonably be expected to be made under a state compensation program, under an insurance policy, under any Federal or State health benefits program, or by an entity that provides health services on a pre-paid basis.

- (3) Any other activity proposed by the applicant and approved by HUD (for competitive grants only) [24 CFR 574.300(b) (11)].

We caution that the eligible use of HOPWA funds, including those specifically mentioned above may depend upon the specific activities being carried out and/or the intended beneficiaries of such activities.

### **Indian Housing Block Grant (IHBG)**

Under NAHASDA §202(a)(2), which permits development funding, an IHBG recipient could use funds to add screens to affordable housing units.

NAHASDA §202(a)(6) allows a grantee to propose a model activity “that [is] designed to carry out the purposes of [NAHASDA], which could open up an avenue to fund spraying insect repellent on a community wide level (as opposed to in individual homes). The model activity requires HUD approval, and if approved, it would be an eligible IHBG expense. Generally, the Model Activity Committee will look at whether the activity directly benefits residents of affordable housing, and would prorate the costs if the project also benefits people who are not residents of NAHASDA-assisted housing. Typically, approved model activities have a clear tie to housing, so there may be difficulty getting the committee to approve this request.

### **Native Hawaiian Housing Block Grant (NHHBG)**

Under §810(b) of NAHASDA, which permits development-related expenditures, the Department of Hawaiian Homelands (DHHL), the only NHHBG recipient, could use NHHBG funds to provide screens for affordable housing residents.

NAHASDA §810(b)(5) allows DHHL to propose a model activity “that [is] designed to carry out the purposes of [NHHBG], which could open up an avenue to fund spraying insect repellent on a community wide level (as opposed to in individual homes). The model activity requires HUD approval, and if approved, it would be an eligible NHHBG expense. Generally, the Model Activity Committee will look at whether the activity directly benefits residents of affordable housing, and would prorate the costs if the project also benefits people who are not residents of NHHBG-assisted housing. Typically, approved model activities have a clear tie to housing, so there may be difficulty getting the committee to approve this request.

### **Indian Community Development Block Grant (ICDBG)**

Under the ICDBG program, which is competitively awarded, a grantee could receive funds to provide screens or spray insect repellent community wide under the public service eligible activity per 24 CFR 1003.201(e), or in response to an imminent threat per 24 CFR 1003, Subpart E. There are, however, limitations in both scenarios. Only 15% of an ICDBG award can be spent on a “public service” eligible activity, which significantly limits the amount of funding that is available. Imminent threat funds are awarded on a first come, first serve basis, have an award cap set in the NOFA annually, and are usually expended in full every year. As the title suggests, the

threat must be imminent, so it is likely that funding would not be available if a grantee wanted to take preventative measures – the Zika virus would likely need to already be present in the community before funds could be available.

#### **Section 4 Capacity Building for Community Development and Affordable Housing Program**

Although Section 4 money is designed to develop the capacity and ability of community development corporations and community housing development organizations to undertake community development and affordable housing projects and programs, the program does have statutory authority at 42 USC §9816 Note to approve “such other activities as may be determined by the [grantees] in consultation with the Secretary. That said, Zika related responses are very far from the typical activities carried out by the grantees, and there would be concerns about whether the grantees (LISC, the Enterprise Foundation, and Habitat for Humanity) would be best equipped to respond to a Zika epidemic.

#### **Public Housing Operating Fund Program/ Public Housing Capital Fund Program**

In accordance with Section 9(e) of the U.S. Housing Act of 1937, PHAs may use Operating Funds to pay for the costs associated with a “...a program of routine preventative maintenance.” This may include costs associated with spraying for pests including mosquitos.

However, screens are somewhat less clear, since it could involve repairs of existing screens (an operating expense), but could also involve installing screens in situations where there currently are no screens or a major replacement of screens, in which case it could be considered an eligible capital expense.

Other areas where Capital Funds might be used for mosquito abatement could be dwelling structure or site improvements that eliminate standing water issues.

All PHAs regardless of size have the ability to transfer 20% of their annual Capital Fund grant (25% in FY 2015 and FY 2016) to operations, so even if they were not major screen replacements but more of an enhanced maintenance effort, Capital Funds could be utilized by being transferred to operations. Small (under 250 units), non-troubled PHA’s have “full flexibility” of their Capital and Operating funds to utilize them interchangeably between programs (Section 9(g)(2) of the 1937 Act) so those PHAs can utilize 100% of Capital Funds for operating purposes.

One other thought is that PHAs should investigate the services provided by mosquito abatement districts if they exist in the area, what services they provide to assist in mosquito abatement efforts and whether or not their services are covered under the PHA’s cooperation agreement with the municipality.

Currently, PHAs are operating in a fiscal climate where limited Public Housing Operating Funds are available to cover PHA staff salaries and to cover eligible property management and maintenance operations expenses for PHA that own and operate public housing properties. In light of the fiscal climate and Operating Fund pro-ration levels, is it advisable to propose a very

tailored HUD response to PHA operations in specific tropical locations like Florida and Southeast where there is an actual threat of mosquitos spreading the Zika virus.

### **Section 8 (HCV/PBV)**

HAP funds are for housing assistance payments to the owner on behalf of eligible families. A PHA cannot provide an owner HAP funding to cover doors, screens or spraying. HCV and PBV owners are not subject to controls on the use of funds. So, owners certainly can provide doors, screens or spraying. We would not, however, consider this a “use” of Section 8 funds. Once the rent is provided to the owner, he/she has an obligation to provide safe and sanitary housing to eligible families under the terms of the program. He’s not obligated to account his expenditure of funds.

The PHA could use its administrative fee reserve (assuming it has funds in its reserve) to provide funding for the Zika prevention measures to owners. (Under any standard analysis, these are not ongoing costs that the PHA incurs in operating its program. In other words, as with other items we’ve recently discussed with PIH, these Zika measures would be classic administrative fee reserve uses, not covered regular administrative costs.)

### **Section 8 Project Based Rental Assistance and Section 202 Supportive Housing for the Elderly Program/Section 811 Supportive Housing for Persons with Disabilities**

Multifamily project owners covered by 24 CFR 200.853 are responsible for ensuring that their projects comply with the Physical Conditions Standards set forth in 24 CFR Part 5 Subpart G. With HUD approval, Section 8, Section 202, Section 811, and multifamily insured project owners may use residual receipts and reserve for replacement funds for reasonable expenses associated with routine preventative maintenance. The use of residual receipts may include costs associated with spraying for pests including mosquitos, and costs associated with door and screen repair and replacement. The use of reserve for replacement funds may include similar costs, as long as these costs are for capital repairs or extraordinary maintenance rather than routine maintenance items (for example, replacing all of the doors or window screens in a project as part of replacement program). Multifamily insured project owners may also treat costs expended for these purposes as reasonable operating expenses.